IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1262 OF 2004

Smt. Sabana Ayub Shaikh & Anr. ... Appellants

Vs.

The Municipal Corporation for Greater Mumbai. ... Respondents

Mr. L.K. Tripathi for the appellants.

Mr. J. Xavier for the B.M.C.

**CORAM: SMT. RANJANA DESAI, J.**

**DATED: 11TH FEBRUARY, 2005.**

**P.C.**:-

1. Admit. By consent of the parties, taken up for hearing forthwith.

2. This first appeal is directed against the judgment and decree dated 19/10/2004 passed by the City Civil Court at Bombay in L.C. Suit No.6038 of 1999 filed by the appellants/plaintiffs challenging the notices dated 29/9/1999 issued under section 314 of the Bombay Municipal Corporation Act by the defendant-corporation. Admittedly, the defendant-corporation did not file its written statement. The suit was not contested by the defendant-corporation. The plaintiffs tendered their affidavit of evidence. They have produced some documents. However, the learned judge did not specifically mark them as exhibits. The learned judge came to a conclusion that from the evidence or from the

pleadings, it cannot be said that the notices are illegal.

3. Mr. Xavier, the learned counsel appearing for the defendant-corporation contended that the appellants are hawkers and, in view of the judgment of the Supreme Court dated **9/12/2003 in Maharashtra Ekta Hawkers Union & Anr. v. Municipal Corporation, Greater Mumbai & Ors, delivered in Civil Appeal Nos.4156-4157 of 2002**, the only remedy open to the appellants/plaintiffs is to approach the committee appointed by the Supreme Court under the said judgment. The learned counsel for the plaintiffs disputes this submission.

4. In my opinion, since the written statement has not been filed by the defendant-corporation and the suit is not contested by the corporation, it is only proper that the trial court is directed to hear and dispose of the said suit afresh, after giving an opportunity to the defendant-corporation to file its written statement. Both the parties should be allowed to lead their evidence afresh. Hence, the following order:

**O R D E R**

(a) The impugned judgment and decree dated 19/10/2004 passed by the City Civil Court at Bombay in L.C. Suit No.6038 of 1999 is set aside. The trial court is directed to hear and dispose of the

said L.C. Suit No.6038 of 1999 afresh after giving an opportunity to the defendant-corporation to file its written statement. The defendant-corporation should file its written statement within eight weeks from today. The trial court shall permit both the appellants and the respondents to adduce necessary evidence. The trial court shall dispose of the suit afresh on merits in accordance with law after the parties adduce their evidence. The trial court should dispose of the suit within a period of six months from the date on which the defendant-corporation files its written statement.

(b) Till such time the suit is finally heard and disposed of, the defendant-corporation shall not demolish the suit structure.

5. The appeal and the connected civil application are disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)